

## Message Text

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ACTION AF-06

INFO OCT-01 ISO-00 OES-03 SSO-00 NSCE-00 USIE-00 INRE-00

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O 021400Z SEP 75

FM AMEMBASSY TANANARIVE

TO SECSTATE WASHDC IMMEDIATE 7555

NASA HQS WASHDC IMMEDIATE

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E.O. 11652: N/A

TAGS: PFOR, NASA, MA, US

SUBJECT: NASA CLOSURE: MALAGASY REJECT U.S. EQUIPMENT OFFER

SUMMARY: MALAGASY GOVERNMENT HAS REJECTED U.S. OFFER OF EQUIPMENT LISTED AS PART OF U.S. NOTE OF AUGUST 7. MOFA NOTE OF SEPTEMBER 1 (SENT BY MESSENGER) INDICATES THAT GOMR REMAINS OPEN TO OTHER MEANS OF SETTLING NASA PROBLEM INCLUDING INTERNATIONAL ARBITRATION AS SUGGESTED IN MOFA NOTE OF AUGUST 9 TO DEPARTMENT. COPY OF LATTER NOTE NOT PREVIOUSLY RECEIVED BY EMBASSY. FULL TEXT OF BOTH NOTES FOLLOW. END SUMMARY.

1. MOFA NOTE NUMBER 9971-AE/DRB/2D/AM/73, SEPTEMBER 1, 1975.

QUOTE A. THE MINISTRY OF FOREIGN AFFAIRS OF THE MALAGASY REPUBLIC PRESENTS ITS COMPLIMENTS TO THE EMBASSY OF THE UNITED STATES OF AMERICA AND HAS THE HONOR TO REFER TO THE NOTE NO. 185 OF AUGUST 7, 1975 IN WHICH THE EMBASSY INDICATED FIRST THAT THE NASA EMPLOYEES HAD BEEN AUTHORIZED BY THE MALAGASY GOVERNMENT TO HAVE ACCESS TO THE STATION TO WITHDRAW THE EQUIPMENT AND THIS AUTHORIZATION HAD LATER BEEN CANCELLED BY THE MALAGASY GOVERNMENT.

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B. IN THIS RESPECT, THE MINISTRY WOULD LIKE TO MAKE IT CLEAR THAT, ACCORDING TO EMBASSY'S REQUEST IN ITS AIDE-MEMOIRE OF JULY 21, 1975, THE NASA EMPLOYEES HAD BEEN GRANTED PERMISSION BY THE MALAGASY GOVERNMENT TO ENTER THE ADMINIS-

TRATIVE OFFICE, ONLY TO TAKE THE DOCUMENTS REQUIRED FOR THE PAYROLL OF THE STAFF. ON THE OTHER HAND, CONTRARY TO THE ASSERTION IN THE ABOVE-MENTIONED NOTE, IT HAD NEVER BEEN ANTICIPATED TO PERMIT THE NASA EMPLOYEES TO HAVE ACCESS TO THE STATION WITH A VIEW TO WITHDRAWING EQUIPMENT LIKELY TO BE USED ELSEWHERE BY THE UNITED STATES GOVERNMENT. THE MINISTRY WISHES TO REMIND THAT THE WITHDRAWAL OF SAID EQUIPMENT IS SUBJECT TO THE PAYMENT BY THE UNITED STATES GOVERNMENT OF THE AMOUNT DUE FROM NASA AS RENT.

C. IN THE SAME NOTE, THE EMBASSY ASSERTS THAT THE AGREEMENT OF OCTOBER 2, 1963 HAVING EXPIRED IN NOVEMBER 1973, AFTER CONSECUTIVE EXTENSIONS, THERE IS NO OTHER AGREEMENT WITH THE EXCEPTION OF THE DRAFT DISCUSSED IN NOVEMBER 1974, PROVIDING FOR THE PAYMENT OF SUCH RENTS, AND THAT THE UNITED STATES GOVERNMENT WOULD HAVE IMPLEMENTED IT IN GOOD FAITH. SO, IN REFERRING TO THE SAID DISCUSSIONS OF NOVEMBER 1974, ON THE DRAFT, THE EMBASSY FIXES THE UNITED STATES GOVERNMENT'S COMMITMENT AS BEGINNING ON JANUARY 1973 AND FOR ANNUAL RENT AMOUNTING TO FMG 20 MILLIONS APPROXIMATELY (US\$ 100,000).

D. IT IS CLEAR THAT IF THE AGREEMENT OF OCTOBER 7, 1963 EFFECTIVELY EXPIRED IN NOVEMBER 1973, THE LIABILITIES ENSUING FROM THE SAID AGREEMENT REMAIN NONETHELESS INASMUCH AS THEY HAVE NOT BEEN EXECUTED IN GOOD FAITH. THESE OBLIGATIONS HAVE NO CONNECTION WITH THE ABOVE DRAFT TEXT WHICH, SINCE NOT HAVING BEEN SIGNED BY THE PARTIES, THEY ARE NOT AT ALL RELEVANT TO SETTLE THESE LIABILITIES.

E. ON THE OTHER HAND, THE EFFECTIVE LIABILITIES WHICH THE UNITED STATES SIDE CANNOT IGNORE, RESULT FROM THE APPLICATION OF THE PROVISIONS OF SECTIONS 2(A) AND (B) OF THE AGREEMENT OF OCTOBER 7, 1963 UNDER WHICH THE UNITED STATES GOVERNMENT COMMITS ITSELF TO UTILIZE THE LAND AND RIGHTS-OF-WAY ON PAYMENT OF RENT. THESE LIABILITIES ARE EFFECTIVE STARTING ON THE SIGNING DATE OF THE AGREEMENT, THAT IS TO SAY IN OCTOBER 1963, AND THE AMOUNT DUE ANNUALLY LIMITED OFFICIAL USE  
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WAS EVALUATED AT FNG 200 MILLION.

F. THE MALAGASY GOVERNMENT, HAVING FULFILLED ITS LIABILITY TOWARDS THE UNITED STATES SIDE BY PLACING AT NASA'S DISPOSAL THE LAND AND RIGHTS-OF-WAY NECESSARY FOR THE OPERATION OF THE STATION, CONSIDERS IT THE MALAGASY GOVERNMENT'S RIGHT TO REQUIRE THE UNITED STATES GOVERNMENT TO RESPECT ITS LIABILITIES AS COMPENSATION IN CONFORMITY WITH THE PRINCIPLES OF INTERNATIONAL LAW GENERALLY ACCEPTED BY CIVILIZED NATIONS "PACTA SUNT SERVANDA."

G. IN CONFORMANCE WITH SAID LIABILITIES BY THE UNITED

STATES SIDE, THE MALAGASY GOVERNMENT DID NOT FAIL TO TAKE INTO ACCOUNT THE AMERICAN PROPOSAL IN ABOVE QUOTED NOTE CONCERNING THE GRANTING OF EQUIPMENT AND BUILDINGS INCLUDED IN A LIST ENCLOSED, IN EXCHANGE FOR THE RIGHT TO WITHDRAW OTHER EQUIPMENT.

H. NONETHELESS, THE MALAGASY GOVERNMENT REGRETS THAT IT CANNOT ACCEPT THIS PROPOSAL. AS A MATTER OF FACT, AFTER EVALUATING THE EQUIPMENT AND BUILDINGS, IT APPEARS THAT THEIR VALUE REPRESENTS ONLY A SMALL PART OF THE AMOUNT DUE FROM NASA AS RENTS FOR OVER TEN YEARS FOR UTILIZATION OF THE LAND NECESSARY FOR THE ESTABLISHMENT OF THE STATION.

I. HOWEVER, IT REMAINS UNDERSTOOD THAT IN SPITE OF THE ABOVE REJECTION, THE MALAGASY GOVERNMENT REMAINS OPEN TO ALL OTHER FORMS OF SETTLEMENT OF THIS MATTER AND REITERATES THE PROPOSALS OF ITS VERBAL NOTES NO. 8996/AE/ARB/2D/AM-73 OF AUGUST 1975 SENT TO THE DEPARTMENT OF STATE, A COPY OF WHICH IS ENCLOSED.

J. COMPLIMENTARY CLOSING. END QUOTE.

2. MOFA NOTE NO. 8976-AE/DRB/2D/AM-73 DATED AUGUST 9, 1975.

A. THE MINISTRY OF FOREIGN AFFAIRS OF THE MALAGASY REPUBLIC PRESENTS ITS COMPLIMENTS TO THE DEPARTMENT OF STATE OF THE UNITED STATES OF AMERICA AND HAS THE HONOR TO REFER TO THE MINISTRY'S NOTE NO. 75/434-AE/SG/CF OF JULY 22, 1975 IN WHICH THE MINISTRY PROPOSED THAT THE MATTER IN DISPUTE LIMITED OFFICIAL USE  
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CONCERNING THE PAYMENT OF RENTS DUE FROM NASA BE SETTLED AT THE UNITED STATES SIDE CONVENIENCE, OUT OF COURT OR BY HAVING RECOURSE TO LAW.

B. THE MINISTRY WOULD LIKE, THEREFORE, TO RENEW TO THE DEPARTMENT OF STATE THE WISHES OF THE MALAGASY GOVERNMENT THAT THE AMERICAN AUTHORITIES REPLY TO THE ABOVE PROPOSALS BY INDICATING WHICH MEANS OF SETTLEMENT THE UNITED STATES GOVERNMENT PREFERS TO CHOOSE BETWEEN GOOD OFFICES, MEDIATION, CONCILIATION, ARBITRATION OR THE RULE OF A COURT.

C. THE MINISTRY WISHES TO INFORM THE DEPARTMENT OF STATE THAT IN THE MEANTIME THE EQUIPMENT AND THE STATION WILL REMAIN WITH SEALS AFFIXED.

D. COMPLIMENTARY CLOSING.

E. SIGNED JEAN ERNEST BEZAZA END QUOTE.  
ELFERS

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